IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

CRL.REF.No. 3 of 2005()

COP.30/2004 of J.M.F.C.,VAIKOM

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CRIMINAL REFERENCE BY
SESSIONS JUDGE, KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

RESPONDENTS:

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1. RAJESH, S/O. RAGHAVAN,
NELLIKKUNNUKALA HOUSE, THUVANISA
CHINNAMUKKU BHAGOM, KOTHANALLOOR KARA
AND VILLAGE.

2. BIJU, S/O. RAJAPPAN, PARAYIL HOUSE
THUVANISA JUNCTION BHAVOM, DO. DO.

3. JOY @ KOCHUMON, S/O. ABRAHAM,
VELIYATHU HOUSE, DO.

4. SAJUMON @ SAJU, S/O. CHACKO, KIZHAKKE
VATTAPARAMBIL HOUSE, FROM PUZHAYADATHU
HOUSE, THUVANISA BHAGOM, DO.

5. SURESH, S/O. CHELLAPPAN, PORKKATTIL HOUSE
THUVANISA BHAGOM, DO.

6. SASI, S/O. RAMANKUTTY, PARISAYIL HOUSE
THUVANISA ST.THOMAS MUKKU BHAGOM, DO.

BY ADV. SRI.BIMAL K.NATH
SRI.SREEVALSAN.V

THIS CRIMINAL REFERENCE HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.Ref. No. 3 of 2005

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Dated this the 1st day of March, 2007

O R D E R

This Criminal Reference was registered on the basis of a communication received from the learned Sessions Judge, Kottayam.

2. Altogether there are six accused persons in the case. Investigation was conducted and the final report was submitted by the police. Cognizance has been taken on the basis of such final report filed by the police of offences punishable, inter alia, under Sections 452 and 354 I.P.C. as also under Section 3(1)(xi) and 3(1)(xv) of the SC/ST (Prevention of Atrocities) Act. As the offences punishable under Section 3 of the SC/ST Act are triable under Section 14 of the SC/ST Act by a notified special Court (Sessions Court), the learned Magistrate had committed the case to the Court of Sessions, Kottayam.

3. When the learned Sessions Judge received the case on committal, it occurred to the learned Sessions Judge that the 4th respondent Sajumon is a person, who is subjected to the provisions of the Indian Army Act. The learned Sessions Judge found that the

case has been committed with the 4th respondent on the array of accused without complying with the provisions of Section 475 Cr.P.C. read along with Rule 3 of the Criminal Courts and Courts Martial (Adjustment of Jurisdiction) Rules 1978, (hereinafter referred to as 'the Rules'). In as much as the above provisions of law have not been complied with by the learned Magistrate before ordering committal, the learned Sessions Judge has made the reference in question under Section 395 Cr.P.C.

4. That the committal is bad for the reason of non-compliance with Section 475 Cr.P.C. and Rule 3 of the Rules appears to be very evident and clear. This Court had occasion to consider these provisions earlier in the decision reported in **State of Kerala** v. **Velayudhan** (1996 (1) KLT 206). Sections 69 and 70 of the Army Act read along with Section 125 of the said Act and Section 475 Cr.P.C along with Rule 3 of the Rules make it very clear that the learned Magistrate must have followed the procedure prescribed of addressing the competent Military Authority or the Commanding Officer in compliance with Rule 4 of the Rules. In as much as such compliance is not there, I am satisfied that the learned Sessions Judge is correct in his conclusion that the committal order in so far as it concerns the 4th accused is bad for that reason.

5. Another contention that is raised is whether in the light of Section 14 of the SC/ST Act, it is necessary to comply with the said procedure. Act 20 of the SC/ST Act reads as follows:

> **S.20. Act to override other laws**. - Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."

It is pointed out that under Section 14 of the SC/ST Act the Court of Sessions designated as Special Court has to try cases under the said Act. Section 14 r/w. Section 20 must indicate, it is suggested, that they would over ride the provisions of Section 475 Cr.P.C., the Rules as also Section 69, 70 and 125 of the Army Act.

6. The question is, which Act is to be reckoned as special law to have the effect of over riding the other. The purpose of the stipulations regarding over riding of the provisions of the other Act and the totality of circumstances have got to be considered while taking a decision on this aspect. The provisions of the Army Act deal with trial of offenders by court martial in contra distinction to trial by regular courts. All regular criminal courts, whether they be special courts like the one under Section 14 of the Act or other courts constituted under the Cr.P.C., must all be reckoned as

coming in one group in contra distinction to court martial when it comes to interpretation of Sections 69, 70 and 125 of the Army Act and Section 475 Cr.P.C. The provisions of the Army Act relating to a special procedure for the trial of Army personnel amenable to the provisions of the Army Act must be given primacy while interpreting a provision like Section 20. Section 20 r/w. Section 14 only deals with the question as to which of the ordinary and regular criminal courts constituted under the Cr.P.C. shall have jurisdiction to try an offender; whereas, the provisions of Sections 69, 70 and 125 of the Army Act must suggest as to which Court - court martial or regular criminal court - shall have jurisdiction to deal with an offender, who is amenable to the provisions of the Army Act. I have no hesitation, in these circumstances, to conclude that notwithstanding Section 20, it must be held that the provisions of the Army Act and Section 475 Cr.P.C. must prevail over the over riding contemplated under Section 20 of the SC/ST Act.

7. This Criminal Reference is accordingly answered directing quashing of the committal order dt. 29.11.2004 passed by the J.F.C.M., Vaikom. The records shall be sent back to the learned J.F.C.M., Vaikom, who shall again consider the committal of the case after following the

procedure under Section 475 Cr.P.C. and Rule 3 of the Rules afresh. Considering the long pendency of the matter, I observe that the learned Magistrate must expeditiously complete the necessary steps and pass order of committal afresh. I make it clear that the learned Magistrate and the learned Sessions Judge need not compel the accused to execute fresh bonds if the decision were taken to commit the case afresh after following the procedure prescribed. The bonds executed by them shall continue to remain valid in that event.

(R. BASANT)
Judge

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